

### **REMARKS**

Claims 1-17 are canceled and new claims 18-20 are added. Support for these new claims can be found in the specification at, for example, pp. 16-17, and the original claims.

Applicants respectfully submit that the invention of new claims 18-20 falls within Group II elected in response to the Restriction Requirement. As such, Applicants request that new claims 18-20 be examined in lieu of claims 1-17, which are now canceled.

### **ABSTRACT**

The Abstract is amended such that it is now limited to a single paragraph.

### **CLAIM OBJECTIONS**

The new claims specify elected SEQ ID NO: 13 only.

### **REJECTIONS UNDER 35 U.S.C. §112**

Claims 2, 10, 11, and 13 were rejected as being non-compliant with the definiteness requirement of 35 U.S.C. § 112, second paragraph. Applicants respectfully request reconsideration.

Without conceding to the propriety of this rejection and in order to expedite prosecution, new claims 18 and 19 recite the specific stringent hybridization conditions. Accordingly, Applicants respectfully submit that claims 18-20 are in compliance with the definiteness requirement of 35 U.S.C. § 112, second paragraph.

Claims 2, 10, 11, and 13 were rejected as being non-compliant with the enablement requirement of 35 U.S.C. § 112, first paragraph. Applicants respectfully request reconsideration.

Without conceding to the propriety of this rejection and in order to expedite prosecution, new claims 18 and 19 are limited to a promoter comprising the DNA sequence of SEQ ID NO: 13 or DNA hybridizing under the recited stringent conditions to DNA consisting of the nucleotide sequence of SEQ ID NO: 13 and functioning as an environmental stress responsive promoter. Accordingly, Applicants respectfully submit that claims 18-20 are in compliance with the enablement requirement of 35 U.S.C. § 112, first paragraph.

Claims 2, 10, 11, and 13 were rejected as being non-compliant with the written description requirement of 35 U.S.C. § 112, first paragraph. Applicants respectfully request reconsideration.

Without conceding to the propriety of this rejection and in order to expedite prosecution, new claims 18 and 19 are limited to a promoter comprising the DNA sequence of SEQ ID NO: 13 or DNA hybridizing under the recited stringent conditions to DNA consisting of the nucleotide sequence of SEQ ID NO: 13 and functioning as an environmental stress responsive promoter. Accordingly, Applicants respectfully submit that claims 18-20 are in compliance with the written description requirement of 35 U.S.C. § 112, first paragraph.

### **REJECTIONS UNDER 35 U.S.C. § 101**

Claims 2 and 10 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully request reconsideration. Applicants respectfully submit that new claims 18-20 are properly directed to statutory subject matter.

### **REJECTIONS UNDER 35 U.S.C. § 102**

Claims 2, 10, 11, and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by Mine et al. (US Patent No. 6,084,089) or Rounsley et al. (NCBI GenBank, Sequence Accession No. AC005309). Applicants respectfully request reconsideration.

New claims 18 and 19 recite a promoter comprising the DNA sequence of SEQ ID NO: 13 or DNA hybridizing under stringent conditions to DNA consisting of the nucleotide sequence of SEQ ID NO: 13 (with the stringent conditions specified) and functioning as an environmental stress responsive promoter. Mine does not disclose these features. For at least these reasons, claims 18-20 are not anticipated by Mine.

New claim 18 recites “a transgenic plant having an environmental stress responsive promoter that is operably coupled to a gene encoding a stress-responsive protein.” New claim 19 recites providing an environmental stress responsive promoter and operably coupling the promoter to a gene encoding a stress-responsive protein

Rounsley discloses a BAC (bacterial artificial chromosome) clone containing the nucleotide sequence at positions [34137-36136], which is alleged to have 100% sequence identity to SEQ ID NO: 13. Applicants do not concede that the nucleotide sequence [34137-

36136] has 100% sequence identity to SEQ ID NO: 13 nor that any of the genes in the BAC of Rounsley encodes a stress-responsive protein. But even if the nucleotide sequence [34137-36136] does have 100% sequence identity to SEQ ID NO: 13, and even if the BAC of Rounsley does contain a gene encoding a stress-responsive protein, the nucleotide sequence [34137-36136] in the BAC of Rounsley is not operably coupled to the stress-responsive gene. For at least these reasons, claims 18-20 are not anticipated by Rounsley.

### **CONCLUSION**

Applicants respectfully submit that the present application is in condition for allowance. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of this application.

The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

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